$~28

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1687/2004

KISHOR KUMAR ..... Petitioner

Through: Mr. Asit Kumar Roy &
Mr. Anand Kumar Chauhan, Advs.

versus

MINISTRY OF DEFENCE & ORS. ..... Respondents

Through: Mr. Jaswinder Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

O R D E R

% 13.03.2020

CM No.9684/2020(u/O.IX R.9 CPC)

1. The petitioner filed this Writ Petition in the year 2004 i.e. before the constitution of the Armed Forces Tribunal (AFT) vide the Armed Forces Tribunal Act, 2007 (AFT Act), impugning his dismissal vide order dated 10th January, 2004 from armed service under the provisions of Section 20(3) of the Army Act, 1950 read with Rule 17 of the Army Rules, 1954, on the ground of contracting plural marriage.

2. The petition was entertained and admitted**.**

3. The petition was ultimately, vide order dated 22nd August, 2006, dismissed in default.

4. The petitioner has filed this application for restoration of the petition to its original position, pleading:

(i) that the lady who was claiming to be married to the petitioner, had filed a proceeding against the petitioner before the Family Court and the petitioner was contesting the said proceeding and was advised that

till decision thereof, the petitioner should not proceed with this Writ Petition and therefore stopped appearing in this Writ Petition which was dismissed in default on 22nd August, 2006;

(ii) that the Family Court, vide order dated 17th July, 2012 dismissed the proceedings filed by the lady claiming to be the wife of the petitioner;

(iii) the petitioner thereafter represented to the Ministry of Defence for his reinstatement and was pursuing the same, but no order was made thereon;

(iv) the petitioner filed a new writ petition in this Court but on the Registry of this Court raising an objection qua subject jurisdiction, the petitioner did not pursue the said writ petition but instead filed OA No.2054/2019 before the AFT, New Delhi; and,

(v) the said OA No.2054/2019 came up before AFT, New Delhi on 28th November, 2019, when the petitioner withdrew the same with liberty to file for restoration of this petition.

5. The question for adjudication in the Writ Petition was a 'service matter' within the meaning of Section 3(o)(ii) to (iv) of the AFT Act and does not fall in any of the exclusionary clauses thereof and had the petition been pending till the date of coming into force of AFT Act of 2007, would have been transferred to AFT under Section 34 of the AFT Act and the decision thereof would have been within the jurisdiction of AFT. However, the Writ Petition stood dismissed in default prior thereto only and thus the occasion for transfer thereof to AFT did not arise.

6. As far as the prayer in this application for restoration of the Writ Petition is concerned, the present is not a case of the petitioner being unable to appear on the date when the Writ Petition was listed, for reasons beyond his control, but a case of the petitioner voluntarily, of his own volition, having chosen to abandon this Writ Petition. Thus no case for restoration is made out.

7. Moreover, the grievance of the petitioner as per this application also is not with respect to the order dated 10th January, 2004 of his dismissal from service but of the non-consideration of his representation and the representation being for re-consideration of the order of his dismissal, the grievance can be made only before the AFT and not in this Court.

8. This application is thus disposed of with liberty to the petitioner to approach the AFT with the grievance of non-consideration of his representation and it is clarified that if the petitioner is found entitled to consideration of his representation or any other order, the dismissal in default of this Writ Petition will not come in the way of the said relief being granted to the petitioner.

RAJIV SAHAI ENDLAW, J

SANGITA DHINGRA SEHGAL, J

MARCH 13, 2020
'ak'..